



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of) **MAIL STOP AF**
Ted Guidotti et al.)
Application No.: 10/807,423) Group Art Unit: 3761
Filed: March 24, 2004) Examiner: Paula L Craig
For: ABSORBENT ARTICLE) Confirmation No.: 3507
COMPRISING AN ABSORBENT)
STRUCTURE)

PRE-APPEAL BRIEF CONFERENCE REQUEST

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Pre-Appeal Brief Conference is requested to review the above-identified application. No amendments are being filed with this request. For at least the following reasons, it is believed that the outstanding rejections are clearly improper and without basis.

Rejections Under 35 U.S.C. § 103

Claims 1-9 and 12 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Guidotti (USPN 5,941,863) in view of Korpman (USPN 4,394,930).

Claims 10 and 11 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Guidotti (USPN 5,941,863) in view of Korpman (USPN 4,394,930) and further in view of Peniak (USPN 4,500,315).

Remarks

The Office Relies on a combination of Guidotti in view of Korpman to assert that claims 1-9 and 12 are unpatentable. However, one skilled in the art would not modify Guidotti with the teachings of Korpman as alleged by the Office. Accordingly,

the Office has not presented a *prima facie* case of obviousness with regard to claims 1-9 and 12.

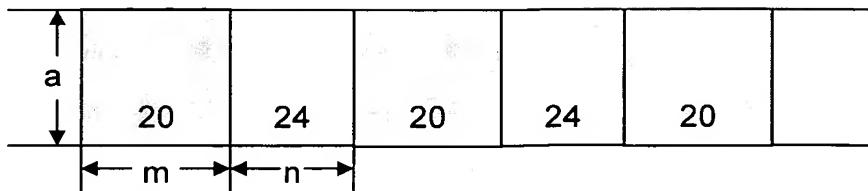
Guidotti relates to an absorbent article that will permit repeated wettings at high penetration rates with regard to liquid discharged on the subsequent wetting occasions. Column 3, lines 5-8. The Guidotti article has a receiving spaces in a storage layer. Column 3, lines 13-20. For example, the article has a storage layer formed of cylindrical bodies 20 with receiving spaces, cavities 24, in the storage layer as shown in Figure 2a.

Discharged liquid is collected in the receiving spaces (cavities 24) between the cylindrical bodies in the storage layer. Column 10, lines 26-28. The discharged liquid is then (slowly) absorbed by an absorbent material in a liquid dispersion layer 23, which lies underneath the storage layer. Column 10, lines 29-31. Thus, the receiving spaces may not have enough time to be emptied of liquid before liquid is again discharged to the diaper. Column 10, lines 34-36.

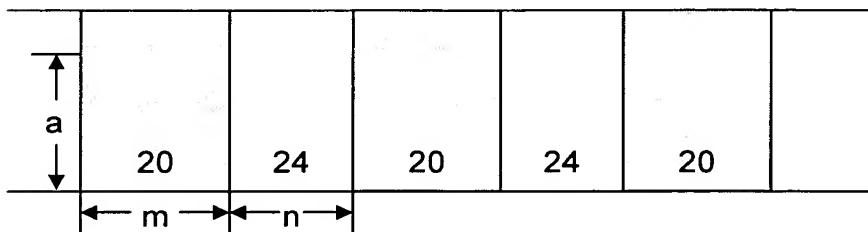
Guidotti's absorbent body overcomes the problem of a full-of-liquid receiving spaces by providing an inventive liquid storage layer and receiving spaces. The storage layer, when wetted, increases in the Z direction (a direction generally perpendicular to the surface of the absorbent article) whereby the size of the receiving spaces also increases. Column 3, lines 13-20. The increase in the size of the receiving spaces upon wetting improves the function of the Guidotti article. Column 10, lines 37-51. A first wetting will result in an increase in the receiving spaces, so that when the diaper is next wetted the spaces available for instantaneous take-up of liquid will be equally as large or larger than the spaces that was available on the first wetting occasion. Column 10, lines 45-47. Thus, the rate at which liquid penetrates into the diaper will not decrease to any appreciable extent, but may even increase with repeated wetting of the diaper. Column 10, lines 48-51.

The increase in receiving spaces occurs because the cylindrical bodies 20 of the storage spaces increase generally only in the Z direction. If the cylindrical bodies 20 of the storage spaces expanded in the X, Y and Z directions then there would not be an increase in the size of the receiving spaces. For example, the storage layer, comprised of cylindrical bodies 20 and cavities 24, is schematically

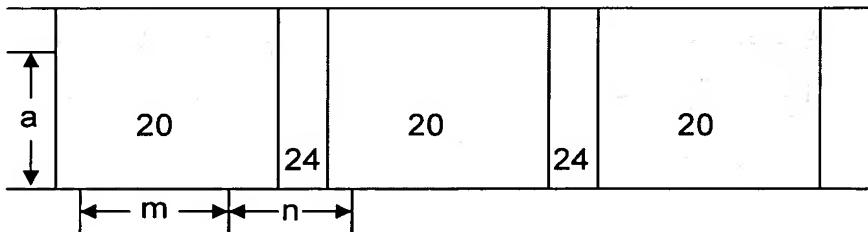
shown before wetting below:



After wetting, the storage layer of Guidotti is schematically shown below:



After wetting, the cylindrical bodies 20 and the receiving spaces both increased in size. The receiving layer was able to increase in size because the cylindrical bodies 20 increased in height (the Z direction) but did not substantially increase in the X,Y directions. If instead the cylindrical bodies, upon wetting, increased in all directions the receiving spaces would not increase. This is schematically shown below:



As can be seen in the schematic drawing, if the cylindrical bodies 20 expand universally (X, Y and Z directions) the receiving spaces (cavities 24) actually shrink upon wetting. This size decrease is precisely against the teachings of Guidotti. Guidotti teaches that the receiving spaces (cavities 24) increase in size upon wetting

in order to maintain/increase the rate of liquid penetration into the diaper upon subsequent wettings.

With regard to the March 29, 2003, Office Action, the Office admits that Guidotti does not teach that the foam fragments (cylindrical bodies 20) are polyacrylate-based. However, the Office asserts that one skilled would have been motivated to modify the absorbent article of Guidotti to include a polyacrylate-based foam as allegedly taught by Korpman. However, the foam materials of Korpman would expand in a manner inconsistent with the objectives of Guidotti. That is, the foam materials of Korpman would expand universally (X, Y and Z directions). This would cause the receiving spaces of Guidotti to shrink upon wetting. This size decrease is precisely against the teachings of Guidotti. Guidotti operates on the principal that the size of cavities 24 would increase. It is improper to combine references where the references teach away from their combination. See MPEP § 2145(X)(D)(2). Accordingly, the modification of Guidotti with the foam material of Korpman is not proper.

In an Advisory Action of July 13, 2006, the Office alleges that the Applicants rely on features not recited in the rejected claims. As made clear in the above remarks, Applicants present arguments why one skilled in the art would not modify Guidotti. Accordingly, in the remarks above the Applicants have not relied on features not recited in the rejected claims.

Moreover, in the Advisory Action, the Office asserts that Guidotti does not indicate that secondary expansion in the X and Y directions would stop the invention from working, unless the expansion were so great as to close the cavity 24 between fragments. This is not accurate. It is not the applicants position that the cavities 24 between the fragments would necessarily close with the modification (using the foam of Korpman). The applicants' position is that the size upon wetting of the cavities 24 would decrease with the modification. This is precisely against the teachings of Guidotti. Guidotti operates on the principal that the size of cavities 24 would increase. It is improper to combine references where the references teach away from their combination. See MPEP § 2145(X)(D)(2). Thus, one skilled in the art would not have modified Guidotti with the foam of Korpman.

Accordingly, withdrawal of this rejection is respectfully requested.

Claims 10 and 11 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Guidotti in view of Korpman and further in view of Peniak. The Office relies upon Peniak for its alleged teaching of a superabsorbent article having at least 50-70% by weight of superabsorbent material in a storage layer. However, Peniak does not overcome the deficiency of the rejection based on Guidotti and Korpman as discussed above. Withdrawal of this rejection is respectfully requested.

Conclusion

Accordingly, applicants respectfully request that the rejection of claims 1-12 be withdrawn.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: September 5, 2006

By: T-D. Boone
Travis D. Boone
Registration No. 52,635

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620